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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,975	06/30/2003	Carol L. Erdman	53394.000711	6951

7590 04/05/2006

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EXAMINER

BOGART, MICHAEL G

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 04/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/607,975

Applicant(s)

ERDMAN, CAROL L.

Examiner

Michael G. Bogart

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 December 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-57 is/are pending in the application.
- 4a) Of the above claim(s) 1-4 and 27-53 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5-26 and 54-57 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 15 August 2003.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restriction***

Applicant's election with traverse of the restriction in the reply filed on 15 December 2005 is acknowledged. The traversal is on the ground(s) that new claims 54-57 include a recitation of the subcombination as part of the overall combination. This is not found persuasive because the subcombination can be used in a materially different absorbent article to enhance its elastic properties. The combination could replace the specific subcombination with a materially different one and still be patentably distinguished over various examples of the prior art.

Regarding applicants comments regarding the method and apparatus restriction requirement, the claimed method could be used to produce an absorbent article having different features than the claimed apparatus, for example, having a different fastening means, or a pouch for holding a disposable wipe.

The requirement is still deemed proper and is therefore made FINAL.

### ***Claim Rejections – 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

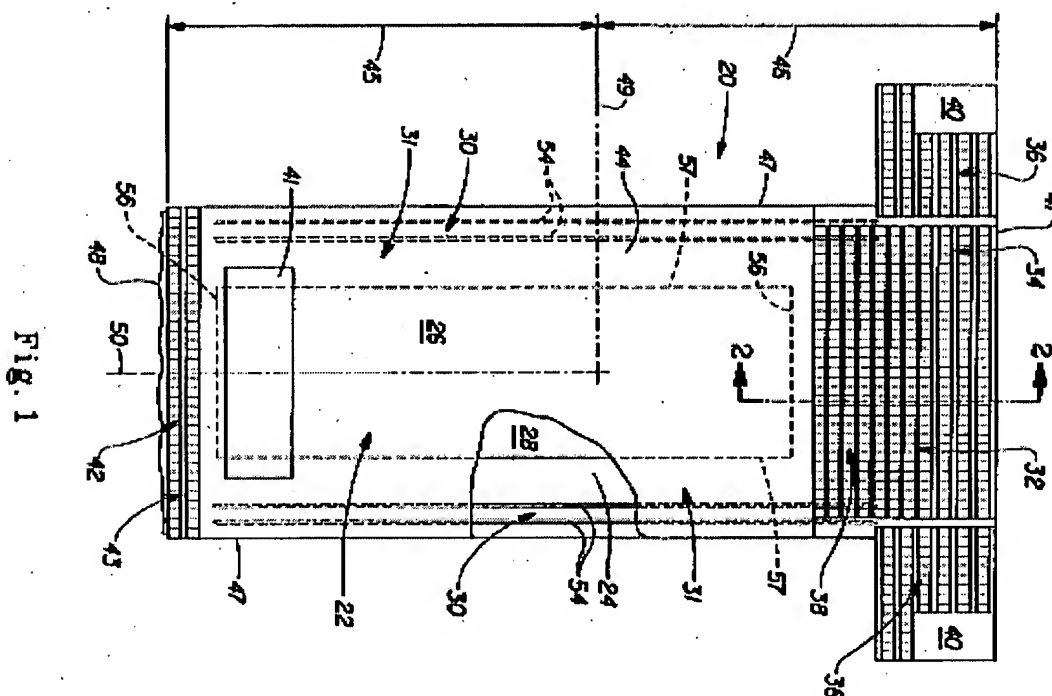
Art Unit: 3761

(d) the invention was first patented or caused to be patented, or was the subject of an inventor's certificate, by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application for patent or inventor's certificate filed more than twelve months before the filing of the application in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 5-10, 21-26 and 54-57 are rejected under 35 U.S.C. § 102(b) as being anticipated by Roe *et al.* (US 5,554,143 A; hereinafter "Roe").

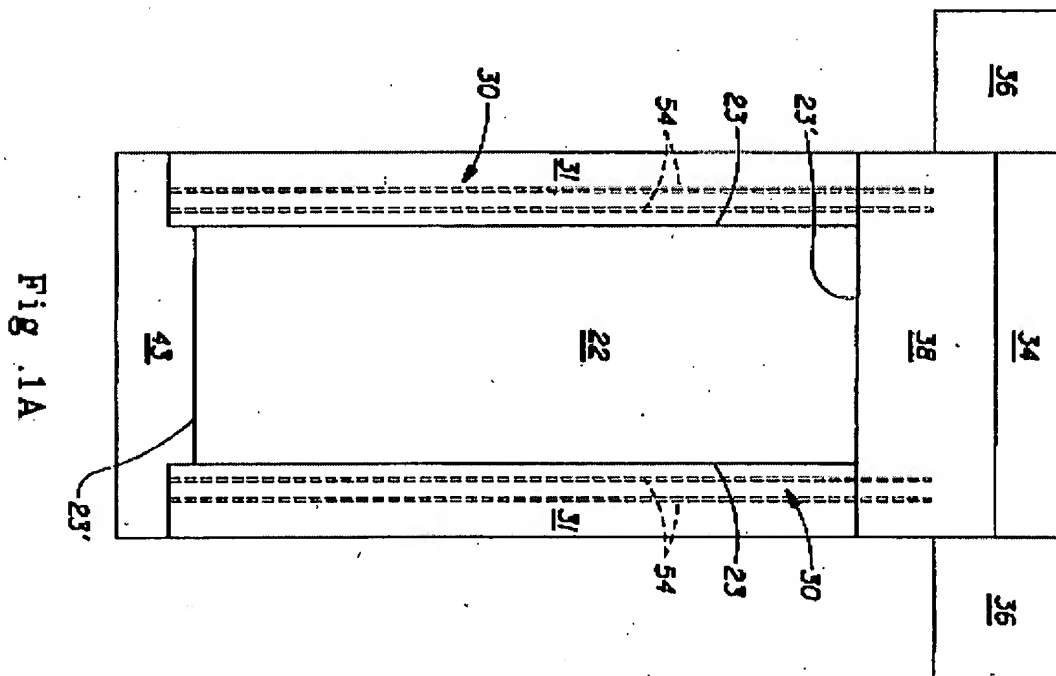
With respect to claim 5, Roe discloses an absorbent article, as shown in figure 1, having a front portion, a back portion and two side portions. The article further comprises a main chassis (44), an absorbent portion (28), and an elastic portion (32). The elastic portion has a larger area in the front portion than it does in the side portions, as shown in figure 1, infra.



Art Unit: 3761

With respect to claims 6-9, the elastic portion has a first region (34) that overlaps the main chassis (44) and a second region (36), which does not overlap the main chassis (44), as shown in figure 1. The first region can be defined so as to have an area that is less than 10 percent of a total area of the elastic portion (32). The second region can be defined to be substantially equal to the total area of the elastic portion (32).

With respect to claim 10, the elastic portion comprises a first elastic portion (34) and a second elastic portion (38). The first and second elastic portions (34, 38) have larger areas than either of the side portions as shown in figure 1A, infra.



With respect to claim 20, the first and second elastic portions can be defined to be triangular in shape.

With respect to the claim 21, the first elastic portion (34) and the second elastic portion (38) have different areas, as shown in figure 1A.

With respect to claim 22, the first and second elastic portions can be defined to be circular or oval in shape.

With respect to claim 23, the first and second elastic portions can be defined to be diamond shaped.

With respect to claim 24, the first and second elastic portions (34, 38) are rectangular, as shown in figure 1A.

With respect to claim 25, the article is a diaper, as disclosed in column 2, line 28.

With respect to claim 26, the article is a pant, as disclosed in column 2, lines 28-29.

With respect to claim 54, Roe discloses an absorbent article subassembly (44) for attaching to an absorbent article (20) as shown in figure 1. The absorbent garment (20) comprises a front portion, a back portion, and two side portions. The subassembly comprises a first carrier layer (26) and an elastic member (32). The elastic member (32) has a center portion (34, 38) and two end portions (36), the center portion (34, 38) having a greater area than either of the side portions (36) as shown in figure 1.

With respect to claim 55, the longitudinal dimension of the center portion (34, 38) defines a first distance, and the longitudinal dimension of each of the two end portions

Art Unit: 3761

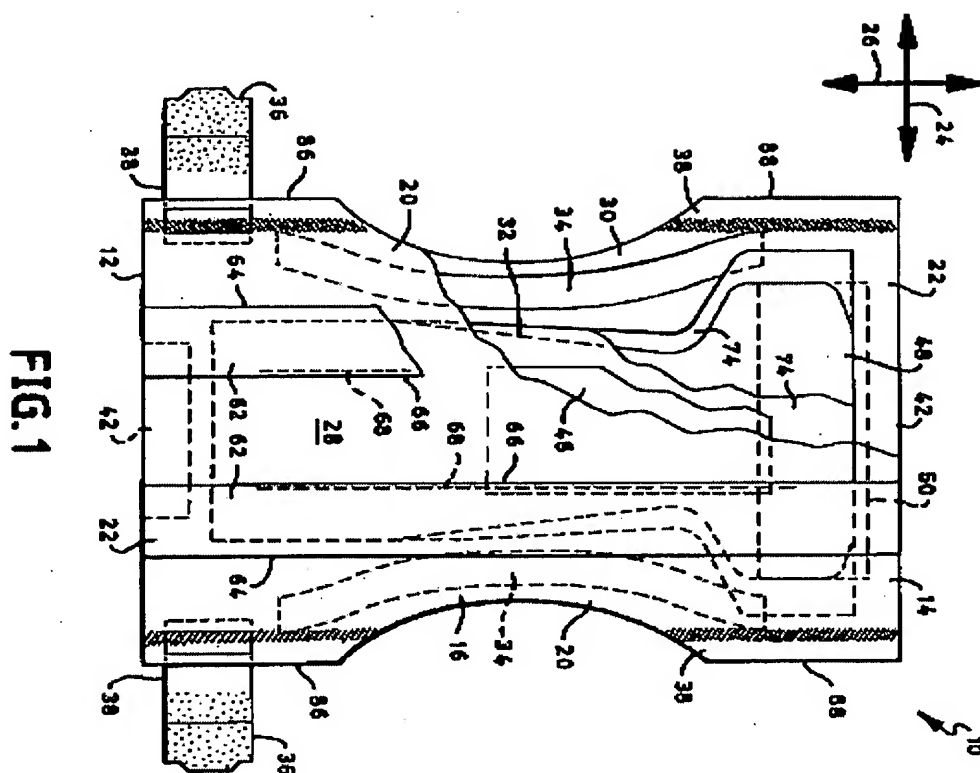
(36) defines a second distance. The first distance is less than twice the second distance, as shown in figure 1.

With respect to claim 56, the lateral dimension of the center portion (34, 38) defines a third distance, and the lateral dimension of each of the two end portions (36) defines a fourth distance. The third distance is greater than the forth distance.

With respect to claim 57, the center portion (34, 38) is positioned between the two end portions (36), and has a lateral dimension that is greater than the lateral dimension of each of the two end portions (36) as shown in figure 1.

Claims 5-10 and 16-26 are rejected under 35 U.S.C. § 102(b) as being anticipated by Krautkramer *et al.* (6,231,557 B1; hereinafter "Krautkramer").

With respect to claim 5, Krautkramer discloses an absorbent article (10), as shown in figure 1, *infra*, having a front portion (12), a back portion (14), and two side portions (38). The article further comprises a main chassis (20) an absorbent portion and an elastic portion (30), as disclosed in column 6, lines 50-55. The elastic portion (30) has a larger area in the front portion than it does in the side portions (38), which do not comprise the elastic portion, as shown in figure 1.



With respect to claims 6-9, the elastic portion (30) can be defined to have a first region that overlaps the main chassis (20), and a second region which does not overlap the main chassis (20). The first region can be defined so as to have an area that is less than ten percent of a total area of the elastic portion (30). The second region can be defined to be substantially equal to the total area of the elastic portion (30).

With respect to claim 10, the elastic portion comprises a first elastic portion and a second elastic portion. The first and second elastic portions have larger areas than either of the side portions (38), as shown in figure 1.

With respect to claim 16, the side portions (38) are inelastic, as disclosed in column 24, lines 61-62.



Art Unit: 3761

With respect to claims 17-19, the first and second elastic portions of the elastic portion (30) can be defined to form two elastic portions that contact each other in the crotch portion of the article (10) and are triangular in shape.

With respect to claim 20, the first and second portions can be defined to be triangular in shape.

With respect to claim 21, the first and second elastic portions can be defined to have different areas.

With respect to claim 22, the first and second elastic portions can be defined to be circular or oval in shape.

With respect to claim 23, the first and second elastic portions can be defined to be diamond shaped.

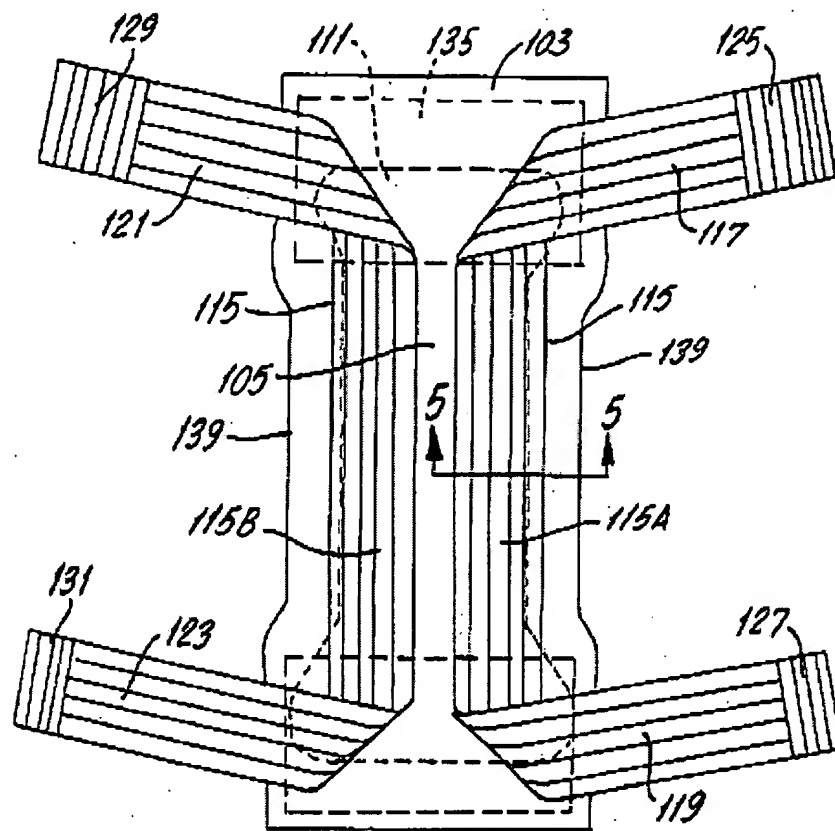
With respect to claim 24, the first and second elastic portions can be defined to be rectangular.

With respect to claim 25, the article is a diaper, as disclosed in column 3, line 1.

With respect to claim 26, the article is a pant, as disclosed in column 3, line 1.

Claims 5-15 and 20-26 are rejected under 35 U.S.C. § 102(e) as being anticipated by Turi *et al.* (US 6,413,249 B1; hereinafter "Turi").

With respect to claim 5, Turi discloses an absorbent article (100), as shown in figure 2, *infra*, having a front portion, a back portion, and two side portions (121, 117). The article (100) further comprises a main chassis (103) an absorbent portion, and elastic portion (115). The elastic portion (115) has a larger area in the front portion than it does in the side portions (121, 117), as shown in figure 2.

**FIG.2**

With respect to claims 6-9, the elastic portions (115) have a first region (115A, 115B) that overlaps the main chassis (103), and a second region (121) that does not overlap the main chassis (103). The first region (115A, 115B) can be defined to have an area that is less than ten percent of a total area of the elastic portion (115). The second region (121) can be defined to be substantially equal to the total area of the elastic portion (115).

With respect to claim 10, the elastic portion (115) comprises a first elastic portion (115C, 115E) and a second elastic portion (115D, 115F) as shown in figure 2A, infra.

Art Unit: 3761

The first and second elastic portions (115C, 115D, 115E, 115F) can be defined to have larger areas than either of the side portions (121, 117), as shown in figure 2A.

With respect to claim 11, the front elastic portion (115C, 115E) corresponds to the front portion of the article (100), and the back portion (115D, 115F) corresponds to the back portion of the article (100). The article (100) further comprises first side elastic portions (121, 117) and second side elastic portions (123, 119).

With respect to claim 12, the front elastic portion (115C, 115E) has a depth that is greater than the depth of the first elastic side portions (121, 117), as shown in figure 2A.

With respect to claim 13, the back elastic portion (115D, 115F), has a depth greater than the depth of the second side portions (123, 119), as shown in figure 2A.

With respect to claim 14, the depth of the front elastic portion (115C, 115E) is substantially equal to the depth of the back elastic portion (115D, 115F), as shown in figure 2A.

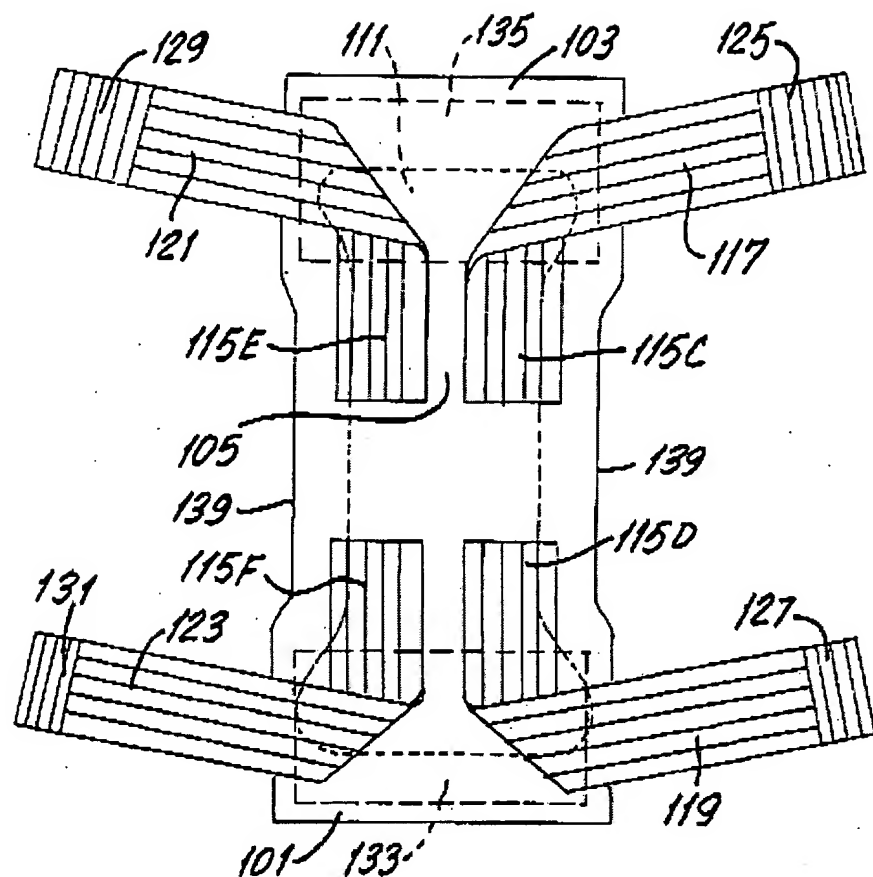
With respect to claim 15, the back elastic portion (115D, 115F) has depth greater than the depth of the second side elastic portions as shown in figure 2A.

With respect to claim 20, the first and second elastic portions are triangular in shape, as shown in figure 10.

With respect to claim 21, the first and second elastic portions can be defined to be circular or oval in shape.

With respect to claim 22, the first and second elastic portions can be defined to be circular or oval in shape.

With respect to claim 23, the first and second elastic portions can be defined to be diamond shaped.

**FIG.2A**

With respect to claim 24, the first and second elastic portions can be defined to be rectangular, as shown in figure 2A.

With respect to claim 25, the article (100) is a diaper, as disclosed in column 3, line 7.

With respect to claim 26, the article (100) is a pant, as disclosed in column 1, line 9.

Claims 5-26 and 54-57 are rejected under 35 U.S.C. § 102(d) as being barred by applicant's Canadian patent (CA 2 466 610 A1), issued 05 June 2003.

Art Unit: 3761

Regarding claims 5-26, the Canadian patent recites substantially the same limitations in claims 5-26.

Regarding claims 54-57, see figures 1-8.

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

In the event the examiner is not available, the Examiner's supervisor, Tatyana Zalukaeva may be reached at phone number (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for formal communications. For informal communications, the direct fax to the Examiner is (571) 273-4933.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you

Art Unit: 3761

have questions on access to the Private PAIR system, contact the Electronic Business

Center (EBC) at 866-217-9197 (toll-free).



Michael Bogart  
3 April 2006

**TATYANA ZALUKAEVA**  
**PRIMARY EXAMINER**

